STATE OF MICHIGAN

COURT OF APPEALS

LON R. JACKSON,

Plaintiff-Appellant,

and

DORIS A. JACKSON, LAWRENCE ORTEL, KAREN ORTEL, ASTRID HELEOTIS, and DREW PESLAR,

Plaintiffs/Counter-Defendants-Appellants,

v

MILTON B. OSGOOD and EVELYN OSGOOD,

Defendants/Counter-Plaintiffs-Appellees.

UNPUBLISHED
June 27, 2006

No. 265510
St. Clair Circuit Court
LC No. 03-002395-CH

Before: Bandstra, P.J., and Saad and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court judgment denying plaintiffs' motion for summary disposition, granting defendants' motion for summary disposition, and quieting title to disputed "park" property in favor of defendants. We affirm.

Plaintiffs are owners of subdivision lots that were platted in 1888. At issue in this case is an approximate 11-acre parcel of largely undeveloped land that is designated on the plat as "Reserved for Park." The streets on the plat were dedicated to public use, but the plat does not contain similar language with respect to the disputed property. The "park" property has never been used as a park. In 1892, the property was conveyed by the plat creator, in a deed without restrictions, to an individual. The property was subsequently conveyed over the years to other private owners. A 1901 commissioner's deed conveyed the property

> subject to the right of all lot owners on the present Grove Pointe subdivisions and of the grantees of Freeman B. Dickerson of lots [in] any other subdivisions on Harsens Island to use the park above described for the purposes of proper

> recreation subject to rules or regulations to be prescribed by the Grande Pointe Club.

There was no reference to the property in conveyances between 1901 and 1963, when defendants received a quitclaim deed from someone other than the 1901 grantee that expressly included the disputed property. Shortly after acquiring the property in 1963, defendants built a fence around the property, posted "private" and "no trespassing" signs, asked people to leave when they saw them on the property, paid the taxes on the property, paid the assessment for water lines that crossed the property, logged the property, appeared at local meetings as owners of the property, and received a permit from the township to build a shed on the property. Plaintiffs testified that their children occasionally played on the property, that they sometimes walked on and cleared brush from the property, and that no one had ever excluded them.

Plaintiffs filed this action in 2003, alleging that the 1888 plat reserved the disputed property as a park for the benefit of the lot owners. Defendants denied that the property was ever dedicated or intended as a park for the benefit of the lot owners, and filed a counterclaim to quiet title to the property in their favor. The parties filed cross-motions for summary disposition under MCR 2.116(C)(10). The trial court denied plaintiffs' motion, granted defendants' motions, and quieted title to the property in favor of defendants. This appeal followed.

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. The court considers the submitted admissible evidence in a light most favorable to the nonmoving party to determine whether a genuine issue of fact exists. MCR 2.116(G)(2); *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The motion should be granted if the evidence demonstrates there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). The trial court's decision is reviewed de novo. *Ritchie-Gamester*, *supra* at 76-77. Actions to quiet title are equitable in nature, MCL 600.2932, and also subject to de novo review. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

Plaintiffs correctly observe that "private dedications are valid in plats registered both before and after 1967," the date of the Land Division Act (1967 PA 288), MCL 560.101 *et seq.* *Little v Hirschman*, 469 Mich 553, 563; 677 NW2d 319 (2004). Plaintiffs are also correct that a formal dedication, private or public, is not necessary to create a park. *Schurtz v Wescott*, 286 Mich 691; 282 NW 870 (1938). In *Schurtz*, the Supreme Court indicated that estoppel prevented the plaintiff from exercising exclusive rights. *Id.* at 697. It did not appear to indicate that the parks were dedicated merely because they were so labeled on the plat. Nevertheless, subsequent cases have interpreted the holding in *Schurtz* in this fashion. In *Kirchen v Remenga*, 291 Mich 94, 104; 288 NW 344 (1939), the Supreme Court, citing *Schurtz*, stated:

> The sale of lots with reference to a plat in which areas are designated as parks passes to the purchasers of the lots a common right to use such areas for park purposes.

It continued:

> [T]he purchasers of lots in the original plat were entitled to the preservation of the park areas in substantially their natural state, free from the

> intrusion of private individuals or corporations who may seek to acquire and exercise exclusive rights. [*Kirchen, supra.*]
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> The owners of abutting lots may be presumed to have purchased in part consideration of the enhanced value of the property. [*Id.* at 106-107.]
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> The purchasers of lots in the original plat took not only the interest of the grantor in the land described in their respective deeds, but as an incorporeal hereditament . . . appurtenant to it, to an easement in the streets, parks and public grounds mentioned and designated in the plat as an implied covenant that subsequent purchasers should be entitled to the same rights[1] . . . . [S]uch an easement appurtenant to the lots sold is valid and enforceable not only against the plattor of such land, but as against all who hold under the original grantor. [T]he rule is thus stated, "Where land is *represented* on a map or plat as a park, public square, or common, the purchasers of adjoining lots acquire as appurtenant thereto a vested right to have the space so designated kept open for the purpose and to the full extent which the designation imports. The sale and conveyance of lots according to such plat implies a covenant that the land so designated shall never be appropriated by the owner or his successors in interest to any use inconsistent with that represented on the original map. [*Id.* at 108-109 (citations omitted, emphasis added).]

In *In re Engelhardt,* 368 Mich 399, 402; 118 NW2d 242 (1962), the Supreme Court cited *Schurtz* for the following proposition:

> [T]he sale of lots by reference to a plat is an offer by the proprietor of the plat to dedicate the parks to the public, conditioned upon acceptance thereof by the public through general user or by acts of the public authorities; *but in any event such sale gives to the lot purchasers private rights in such parks.*

More recently, in *Little, supra* at 558, our Supreme Court noted that the *Schurtz* plat dedicated the streets to the public but was silent with respect to whether designated parks were dedicated. *Id.* It then stated, "[t]his was in effect a finding that a private dedication was valid and enforceable."[1] *Id.* Hence, it seems clear that the mere recording of a plat on which parks are

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[1] As an incorporeal herditament, an easement passes to each landowner without specific reference to the easement in the conveyance. *Greve v Caron,* 233 Mich 261, 265; 206 NW 334 (1925).

[1] With respect to defendants' argument that the use in the plat of the word "reserved" indicated the plat creators' intent to reserve the parcel to themselves, we note that our Supreme Court recently found the language "reserved for the use of the lot owners" constituted a private dedication. *Martin v Beldean,* 469 Mich 541, 544, 549; 677 NW2d 312 (2004). Hence, the use of the word "reserved" does not, by itself, necessarily indicate an intent to reserve the land for the use of the plat creators. Moreover, given that the plat creators owned the entire plat at the

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designated constitutes an offer to dedicate the parks,[2] and private lot owners accept the offer to dedicate when they purchase lots by deeds that reference the recorded plat. See *Martin v Beldean*, 469 Mich 541, 549 n 19; 677 NW2d 312 (2004).[3]

Although we find the court erred in determining that a dedication had not been made, we find the court properly quieted title in defendants.[4] In a quiet title action, a plaintiff has the initial burden of establishing a prima facie case of title, then the burden shifts to the defendant to prove a superior right or title. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). Here, defendants, who were the counter-plaintiffs in the quiet title action, provided evidence of title through a recorded 1963 quitclaim deed, along with evidence that they had paid the property taxes and maintained the property since 1963. A quitclaim deed only passes that portion of an estate that a grantor lawfully possesses. MCL 565.3. Because there is no indication in the provided documents that defendants' grantors possessed any interest in the park, it is questionable whether the quitclaim deed alone was sufficient to establish title. *Brownell Realty, Inc v Kelly*, 103 Mich App 690, 695; 303 NW2d 871 (1981) (grantee of a quitclaim deed obtained only the title that the grantor had); *Smith v Lawrence*, 12 Mich 431, 432 (1864) (the mere giving of a deed did not demonstrate that the grantor had title); *VonMeding v Strahl*, 319 Mich 598, 609; 30 NW2d 363 (1948) ("the recording of an instrument cannot, of itself, make an invalid grant valid"); *Dep't of Natural*

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time it was created, it is illogical that the plat creators would feel obliged to reserve property to themselves; to retain the property, they merely had to refrain from granting it to another.

[2] It is well established, at least with respect to the dedication of land for a public purpose, that a valid dedication requires two elements, (1) "a recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use," and (2) "acceptance by the proper public authority." *Kraus v Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996).

[3] Defendants cite *Choals v Plummer*, 353 Mich 64, 71; 90 NW2d 851 (1958), for the proposition that a grantor may not make a reservation in a conveyance for the benefit of a stranger to the transaction, and *Stevens Mineral Co v Michigan*, 164 Mich App 692; 418 NW2d 130 (1987), and *Negaunee Iron Co v Iron Cliffs Co*, 134 Mich 264; 96 NW 468 (1903), for the proposition that a reservation is "a legal fiction which treats the grantor's reservation as an implied grant from the grantee back to the grantor." These cases, however, did not involve conveyances of platted property or refute precedent with respect to private dedications. Therefore, we find this authority inapposite and conclude that the park in the instant case was duly dedicated.

[4] Plaintiffs argue that defendants – by seeking to change land "reserved for park" to private fee ownership – were attempting to revise the original plat; therefore, defendants' exclusive remedy was an action pursuant to MCL 560.221 *et seq.*, and the court erred in considering and deciding their quiet title action. "[T]he exclusive means available when seeking to vacate, correct, or revise a dedication in a recorded plat is a lawsuit filed pursuant to MCL 56.221 through 560.229." *Martin, supra* at 542-543. To the extent defendants were merely attempting to "maintain the status quo" as owners of record to the disputed parcel, their claim was properly brought as a quiet title action. *Id.* at 550 n 21. However, to the extent defendants were ultimately attempting to have the park dedication declared void, they were required to file their claim pursuant to MCL 560.221 *et seq.* *Id.* at 550. Hence, our opinion only addresses the ownership of and rights to the disputed parcel; it is not intended to revise the original plat.

Resources v Carmody-Lahti Real Estate, Inc, 472 Mich 359, 377-378; 699 NW2d 272 (2005) (a quitclaim deed conveys all the grantor's title but does not represent that the title is valid).

However, defendants also had as evidence the length of time in which they had held the property. A person who has an unbroken chain of title of record for at least forty years is considered to have marketable record title, subject only to (1) claims that are not barred by the marketable record title act, MCL 565.101 *et seq.*, and (2) interests inherent in the provisions of the documents comprising the chain of title, which were recorded either within three years after the effective date of the act or during the forty-year period. MCL 565.101.[5] Because defendants held record title to the property for forty years,[6] they presented sufficient evidence of title to establish a prima facie case. *Fowler v Doan*, 261 Mich App 595, 599; 683 NW2d 682 (2004).

To establish their claim of right, plaintiffs reiterated their argument with respect to the plat dedication. They did not provide other indicia of their "ownership" rights to the disputed parcel. "[D]edications of land for private use in plats before 1967 PA 288 took effect convey at least an irrevocable easement in the dedicated land." *Little*, *supra* at 564. Thus, it appears plaintiffs could establish an irrevocable easement in the park. On the other hand, they were also required to establish that their claim was not barred by the marketable record title act. MCL 565.101. MCL 565.106 provides for the extinguishment of "all interests of any nature whatever," which depend on acts antedating the forty-year period, unless notices of claim as provided in MCL 565.103 are filed for record. To preserve a claim pursuant to MCL 565.103, the interested party must file for record "a notice in writing, verified by oath, setting forth the nature of the claim." Because there is no indication that plaintiffs filed a notice complying with § 3, their easement interests were extinguished. Therefore, the trial court was correct when it found that title vested in defendants. Moreover, we hold as a matter of law that the marketable title act extinguished the easement interest of any lot owner who did not file a notice of claim in compliance with § 3 between December 2, 1963, and December 2, 2003.

Plaintiffs next argue that numerous questions of fact precluded a grant of summary disposition under the theory of adverse possession. In its September 6, 2005 judgment, and the expressly incorporated May 9, 2005 opinion, the trial court granted defendants summary disposition on other grounds and did not address adverse possession. However, in an earlier order denying defendants summary disposition, the trial court found that plaintiffs presented sufficient evidence to raise a question of material fact whether defendants established title by adverse possession. Because plaintiffs were the prevailing party in that motion, they have no

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[5] In *Fowler v Doan*, 261 Mich App 595, 599-603; 683 NW2d 682 (2004), this Court found that the marketable record title act applied to equitable actions to quiet title.

[6] The disputed parcel was quitclaimed to defendants December 2, 1963. Plaintiffs filed the instant action September 18, 2003. Although plaintiffs' suit certainly placed defendants on notice of plaintiffs' claim of interest, there is no indication in the record that a notice of lis pendens or any other claim of interest was filed for recording to place the public on notice of plaintiffs' claim with respect to the parcel.

standing to raise this issue on appeal. *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 385; 600 NW2d 406 (1999).

Affirmed.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Donald S. Owens